

REMARKSStatus of the Application

Claims 1-10 are pending and stand rejected.

Section 102 RejectionsSzillage 2,728,598

Claims 1-4, 6-8 and 10 have been rejected under 35 U.S.C. Section 102 as being anticipated by Szillage 2,728,598. Applicants respectfully disagree for the following reasons.

Applicants' claimed invention requires "an auxiliary handle pivotally attached to the [shovel] blade near the leading edge." The Examiner states that the Szillage 2,728,598 shovel has a pivot member 50 "which can be considered as an auxiliary handle attached to the blade near the leading edge." Applicants respectfully disagree. Pivot member 50 cannot be considered a handle because a handle by definition is something that is grasped by the hand, and pivot member 50 is not grasped by the hand of the user. Rather, pivot member 50 extends from a sleeve 66 (slidably attached to the main handle 26) to the shovel blade 14.

In addition, contrary to the Examiner's assertion, pivot member 50 is not pivotally attached to the blade near the leading edge as required in applicants' claim 1. Rather, it is attached near the middle of the blade, away from the leading edge 16 (see Szillage Figure 3). Put simply, the Szillage shovel does not provide an auxiliary handle that assists the user in removing snow as does the claimed invention.

With regard to claim 2, it requires that the auxiliary handle "pivot about an axis defined by the leading edge." Szillage's brace rod 50 pivots about an axis located partway up the upper blade 20, well rearward of the leading edge 16.

With regard to claim 3, it requires that the auxiliary handle have a "free end" that brace rod 50 does not have.

With specific regard to claim 10, in contradistinction to the claimed method, the Szillage shovel cannot be used by two users. The Szillage shovel does not have a main handle that can be pushed by a first user and an auxiliary handle that can be pulled by a second user.

Herzfeld et al. U.S. Patent No. 6,254,154

Claims 1-4, 6-8 and 10 also have been rejected under 35 U.S.C. Section 102 as being anticipated by Herzfeld et al. U.S. Patent No. 6,254,154. Again, applicants respectfully disagree for the following reasons.

The Examiner asserts that Herzfeld discloses a shovel having a "pivot auxiliary handle (22, 26, 42, 38)" [sic] attached to the blade near its leading edge, "particularly the upper leading edge". Applicants disagree that this auxiliary handle is attached to the leading edge of the blade. As defined in applicants' claim 1, the "leading edge" is the edge "which contacts the surface [to be cleared]." Referring to Herzfeld Figure 1, it is clear that the auxiliary handle is attached to the blade 18 at pivot points 29a, 29b, significantly rearward of

the leading edge.

In addition, applicants' claim 1 specifies that the invention is used "for clearing a surface" which is not the purpose of the Herzfeld digging tool.

With regard to claim 3, it requires that the auxiliary handle have a "central stem extending from a free end" and "two diagonal struts extending from the central stem." Herzfeld has no such structure. Even if Herzfeld's arm portions 28 were considered to be equivalent to applicants' diagonal struts and Herzfeld's shaft 26 the equivalent of applicants' central stem, does not have a free end as required by claim 3.

With specific regard to claim 10, the Herzfeld tool does not have a main handle that can be pushed by a first user and an auxiliary handle that can be pulled by a second user while the shovel blade is drawn across a surface. Rather, Herzfeld's tool is used by a single user by inserting the tool into the ground while it is in the position shown in Figure 3A, pushing down on lever 42 while the blade is in the ground to loosen the soil, and lifting up on the tool while it is in the position shown in Figure 3C to remove the soil.

Section 103 Rejections

The Examiner rejected claims 5 and 9 under 35 U.S.C. Section 103(a) as being unpatentable over Szillage 2,728,598 or Herzfeld 6,254,154 in view of Kegan, Sr. 6,203,081. Applicants submit

that claims 5 and 9 are allowable for at least the same reasons as their base claims.


New Claim

Applicants have added new claim 11 which requires that the auxiliary handle can be rotated in front of the forward facing surface of the blade. This feature enables the shovel to be pulled by the auxiliary handle as shown in applicants' Figure 5. It also enables a user to exert an upward force on the blade as described in paragraph 0029 and shown in Figure 4. None of the cited references disclose this feature. Applicants respectfully request allowance of this new claim.

Summary

It is believed that this paper constitutes a complete response to the Office Action mailed October 20, 2004 and an early and favorable action allowing claims 1-11 is respectfully requested. The Examiner is invited to telephone applicants' undersigned attorney if any unresolved matters remain.

Respectfully submitted,


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